If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

LANDMARK PORT HURON, LLC, Plaintiff-Appellee,	UNPUBLISHED April 22, 2021
v	No. 354077 St. Clair Circuit Court
THOMAS J. PELLERITO, Defendant-Appellant.	LC No. 2016-002184-CH

Before: MURRAY, C.J., and MARKEY and LETICA, JJ.

PER CURIAM.

Defendant Thomas J. Pellerito appeals by right the trial court's order granting summary disposition in favor of plaintiff Landmark Port Huron, LLC (Landmark), in this lawsuit involving the parties' abutting buildings in downtown Port Huron. The issues concern the extent of easement rights enjoyed by Landmark over Pellerito's property and ownership rights with respect to a party wall between the buildings. We affirm the trial court's ruling.

I. FACTS AND PROCEDURAL HISTORY

Attached as an Appendix to this opinion and incorporated herein is a survey encompassing the properties. Before the parties obtained their respective properties, the buildings were owned by a group of partners doing business as a partnership under the name Home Town Investments. The pertinent real estate documents were signed by the partners in their capacities as partners and as individuals. For ease of reference, we shall simply refer to "Home Town" as the grantor or contracting party in the documents of conveyance. In January 1997, Home Town sold a portion of the property to defendant Pellerito pursuant to a land contract. The land contract's legal description of the property being conveyed to Pellerito "reserve[ed] an easement for ingress and egress across the Easterly 3.75 feet of [the] above described parcel." See Appendix. We shall refer to this easement as the walkway easement.[1] The walkway easement runs between the

[1] The easement was also identified by the parties as the alley or alleyway easement and the easterly easement.

property purchased by Pellerito and a building directly to the east that is owned by a non-party. The land contract's legal description also indicated that Pellerito was acquiring, in part, "25.0 feet along the Southerly *face* of an existing wall at the rear of #409 Quay Street," which is the address of Pellerito's property, as well as "61.6 feet along the Easterly *face* of an existing wall[.]" (Emphasis added.)

At the same time that the land contract was signed, Home Town and Pellerito executed a separate document titled "MAINTENANCE EASEMENT."[2] The maintenance agreement reserved for Home Town "an easement for ingress and egress over the roof of the premises" being purchased by Pellerito, "including that portion of the premises to the alley which is a part of the description." The legal description of Pellerito's premises in the maintenance agreement was identical to the legal description contained in the land contract. The maintenance easement specifically stated that it was "appurtenant to the premises" retained by Home Town. The agreement provided that the easement "shall be for the purpose of installing and maintenance of mechanical equipment and ingress and egress for the purpose of repairing any damage to the roof." Additionally, Home Town promised to repair any damage caused by its use of the maintenance easement. Further, Home Town agreed to "remove its existing equipment from the roof of . . . [Pellerito's premises] at such time as the equipment is no longer operational and Home Town" had "no right to install additional equipment thereon."

The land contract was paid off by Pellerito in 2002, and Home Town conveyed legal title of the property to Pellerito by warranty deed. The legal description matched verbatim the description in the land contract, including the reservation of the walkway easement for the benefit of Home Town's building. In November 2011, Home Town conveyed the remaining portion of its property to Landmark by warranty deed. Under the deed, the property received by Landmark was subject to the "Party Wall Rights of adjoining owners" and to "Building and use restrictions and easements of record." Landmark's property is known as the Ballentine Building, and Pellerito's property houses The Alley Room restaurant and bar.

In September 2019, Landmark filed suit against Pellerito. The complaint referenced the various conveyances and the walkway easement. Landmark alleged that Pellerito installed gates that prevented access to the walkway easement, that the gates were locked, that Pellerito denied Landmark entry through the gates, that Pellerito allowed the installation of a gas meter that blocked use of the walkway easement, that Pellerito's actions prevented access to and use of Landmark's rooftop property, and that Pellerito placed debris, rubble, and trash in the walkway precluding use by Landmark. Landmark claimed upon information and belief that the walkway had existed since 1919 and that the walkway easement has been referenced in subsequent legal descriptions. Landmark alleged that it had used the walkway easement for emergency ingress and egress since purchasing the Ballentine Building. Landmark further indicated that it had demanded access to the walkway easement on multiple occasions but was rebuffed by Pellerito.

---

[2] This document was at times referred to by the court and the parties as the maintenance agreement. We shall refer to the maintenance easement and maintenance agreement interchangeably.

Additionally, Landmark alleged in its complaint that it had been forced to cease using its rooftop property for business purposes and had lost important safety and emergency access avenues due to Pellerito's violation of Landmark's easement rights. Landmark contended that Pellerito's interference with the walkway easement prevented it "from receiving its certification of occupancy from the City of Port Huron, which in turn prevent[ed] [Landmark] from closing on its construction loan." As later explained by Landmark, the issues between the parties arose around 2016 when Landmark began effectuating its plans to renovate the Ballentine Building into lofts. The renovations were to include rooftop patio access for loft residents, which would require an emergency route for ingress and egress to satisfy building and safety codes.[3]

Count I of the complaint alleged that Pellerito had trespassed on the walkway easement by taking measures and setting up obstacles within the walkway that interfered with Landmark's ingress and egress rights over the walkway. In Count II, Landmark sought declaratory relief that would recognize its legitimate right to access and use the walkway easement. And Count III of the complaint alleged trespass of walls because of Pellerito's use of walls that went beyond his ownership rights under the land contract and associated warranty deed. Landmark requested injunctive and other equitable relief so as to restrain and enjoin Pellerito's actions. A preliminary injunction was granted which provided that "if there is an emergency that requires hasty departure from [Landmark's] property, the occupants of [Landmark's] building are able to climb down the fire escape on the east side party wall of the building to escape through the disputed corridor[.]"

Subsequently, Pellerito moved for summary disposition under MCR 2.116(C)(8) and (10). Pellerito stated that before his purchase of the property there were no real estate documents showing any easements because the properties were in the hands of one owner, Home Town. Pellerito emphasized, in relation to the walkway easement, that "[t]here was no conveyance of the reserved easement in the Warranty Deed" between Home Town and Landmark. Next, Pellerito argued that the maintenance easement was never conveyed to Landmark, as there was no mention of it in the warranty deed conveying Home Town's property to Landmark. Pellerito contended that it could be inferred from the evidence that Landmark was fully aware that the maintenance easement was solely for the purpose of maintenance and removal of equipment located on Pellerito's property. Pellerito asserted that the maintenance easement's purpose no longer existed following the complete removal of the equipment identified in the easement's language. Although Pellerito never made it absolutely clear, his primary position appears to be that the walkway easement was subsumed or encompassed by the maintenance easement, or that the walkway easement was created or recreated within the maintenance easement, or that the walkway easement originated from the maintenance easement, such that the extinction of the maintenance easement effectively terminated the walkway easement. Landmark's stance was that the walkway easement

---

[3] As argued by Pellerito below, Landmark's rooftop deck required an exterior fire escape and Landmark installed a fire escape on a wall shared by the parties, which wall also contained a side entrance to Pellerito's restaurant. Apparently, the fire escape installed by Landmark allowed a person an avenue of escape via the walkway. The parties' failures to provide sufficiently-detailed descriptions of the physical layout of the properties or to submit adequate photographs of the physical layout have made it particularly difficult to obtain a good sense of the path from the rooftop of Landmark's building to the walkway.

and the maintenance easement were two distinct and separate easements that stood on their own and that Landmark's case was based solely on the walkway easement absent any reliance on the maintenance easement.

Pellerito complained that despite Landmark's awareness of the purpose and effective termination or extinguishment of the maintenance easement, Landmark's contractors and principals during renovations severed Pellerito's water line and sewer main, removed Pellerito's antique door from its place on the walkway side of Pellerito's building, demanded removal of Pellerito's fireplace from a party wall, destroyed locking mechanisms on the street side door, removed Pellerito's gas meter, and attempted to use Pellerito's rooftop as an access point by Landmark's tenants. Pellerito argued that Landmark had no right to use or abuse the walkway or to interfere with Pellerito's use and occupation of the walkway. In his prayer for relief, Pellerito asked the court to declare that the maintenance easement was extinguished because its purpose no longer existed and to award monetary damages for the expenses incurred due to Landmark's abuse of Pellerito's property.

Landmark filed a response to Pellerito's motion for summary disposition and moved for summary disposition itself. Landmark observed that the 1997 land contract and maintenance agreement created, contrary to Pellerito's stance, two distinct easements: (1) the walkway easement that reserved ingress and egress rights via the walkway; and (2) the maintenance easement that gave rooftop access for maintenance and repair. Landmark noted that when answering the complaint, Pellerito did not contest Landmark's allegations that the land contract and subsequent warranty deed "reserved . . . an easement for ingress and egress across the Easterly 3.75 feet of [Pellerito's] Parcel."

Landmark argued that the maintenance easement was an easement in gross and that the walkway easement constituted an easement appurtenant, which is an easement that runs with the land. Therefore, according to Landmark, when it purchased the property, i.e., the dominant tenement, it received the benefit of the easement even though there was no reference to the walkway easement in the warranty deed conveying the property to Landmark. And Pellerito trespassed on and interfered with Landmark's walkway easement. Landmark also argued that Pellerito only obtained ownership rights to the easterly face of the party wall and thus any use of remainder of the wall constituted a trespass. Finally, Landmark contended that Pellerito was not entitled to summary disposition and that, instead, summary disposition should be granted in favor of Landmark under MCR 2.116(8) and (10) and MCR 2.116(I)(2).

The trial court decided the motions for summary disposition on the briefs, issuing a written opinion denying Pellerito's motion and granting Landmark's motion. The trial court ruled:

> There is no factual or documentary evidence that supports the position that the easements at issue in this case originate solely from the Maintenance Agreement. While the Maintenance Agreement may have granted and referred to an easement created solely for maintenance and repair of equipment on the rooftops of the properties, this agreement in no way subsumed the express creation of the easement across the walkway that is found in every legal description of [Pellerito's] parcel within these documents. Under Michigan law, an easement is generally categorized as an easement in gross or an easement appurtenant. Easements in gross

> are granted for the benefit of a particular person or sometimes for a particular purpose. Easements appurtenant may be created by grant or reservation. Here, while an easement in gross was created by the Maintenance Agreement, the Easement for ingress and egress over the Easterly 3.75 feet of [Pellerito's] parcel is an easement appurtenant.
>
> In paragraphs 7, 8, and 9 of the . . . Answer, [Pellerito] pled "No Contest" to the allegations that his land contract and deed reserved for his Grantors an easement for ingress and egress across the Easterly 3.75 feet of [Pellerito's] property. [Pellerito's] admission that his documents of conveyance contain a reservation of an easement of ingress and egress across the Easterly 3.75 feet of his parcel ensures that there is no genuine issue of material fact. Therefore, summary disposition pursuant to MCR 2.116(C)(10) and 2.116(I)(2) should be granted in [Landmark's] favor.
>
> [Landmark] is entitled to full and unobstructed use of the Easement across the Easterly 3.75 feet of the walkway between properties. The walkway easement ("Easement") is an easement appurtenant that is wholly separate from the Maintenance Agreement. [Landmark] is entitled to full use of the Easement and any interference by [Pellerito] is trespass.
>
> Contrary to [Pellerito's] position that "[t]here was no conveyance of the reserved easement in the Warranty Deed" to [Landmark], the Easement is one that runs with the land and was in fact conveyed because the Grantors did not include any language to the contrary to specifically exclude it. Thus, . . . it becomes clear that [Pellerito's] claims that he is, in fact, the owner and beneficiary of the easement, lacks the legal sufficiency required to grant [Pellerito's] Motion for Summary Disposition under MCR 2.116(C)(8). Instead the pleadings and Michigan law clearly support the existence of the Easement for [Landmark's] benefit.
>
> Lastly the parties have disputed the extent of [Pellerito's] title as it relates to the common wall between the properties. [Pellerito] has limited title to the common wall and has ignored [Landmark's] requests to remove all items. [Pellerito's] land contract and subsequent deed for the property conveys limited title that extends only up to the face of the common wall, as evidenced by the property description of [Pellerito's] parcel extending "61.6 feet along the Easterly face of an existing wall." There is no language in the conveyances or in the recorded titles that indicate [Pellerito] has ownership be[yond] that face of the common wall between buildings.

On June 17, 2020, the trial court entered an order and judgment that denied Pellerito's motion for summary disposition, that granted summary disposition to Landmark, that declared that Landmark's property was benefited by the walkway easement, that Landmark was entitled to full and unobstructed use of the walkway easement, that Pellerito's title to the party wall was limited and extended up to the face of the wall, and that any occupation or interference by Pellerito beyond the face of the wall constituted a trespass.

II. ANALYSIS

A. STANDARD OF REVIEW AND SUMMARY DISPOSITION PRINCIPLES

"This Court reviews de novo a trial court's decision on a motion for summary disposition." *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018). Easements are construed according to the rules akin to those employed for the interpretation of contracts, *Wiggins v City of Burton*, 291 Mich App 532, 551; 805 NW2d 517 (2011), and we review de novo the proper interpretation and application of contracts, *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). A deed is also a contract and thus its language is construed under de novo review. *In re Rudell Estate*, 286 Mich App 391, 402-403; 780 NW2d 884 (2009).

We conclude that this case is properly analyzed under MCR 2.116(C)(10) because it is resolvable based on the documentary evidence and requires going beyond the mere pleadings. See *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). MCR 2.116(C)(10) provides that summary disposition is appropriate when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." A motion brought pursuant to MCR 2.116(C)(10) tests the factual support for a party's action. *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013). "Affidavits, depositions, admissions, or other documentary evidence in support of the grounds asserted in the motion are required . . . when judgment is sought based on subrule (C)(10)," MCR 2.116(G)(3)(b), and such evidence, along with the pleadings, must be considered by the court when ruling on the (C)(10) motion, MCR 2.116(G)(5).[4]

"A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact." *Pioneer State*, 301 Mich App at 377. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). *Pioneer State*, 301 Mich App at 377. "Like the trial court's inquiry, when an appellate court reviews a motion for summary disposition, it makes all legitimate inferences in favor of the nonmoving party." *Skinner v Square D Co*, 445 Mich 153, 162; 516

---

[4] MCR 2.116(G)(4) provides:

> A motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.

NW2d 475 (1994). A court may only consider substantively admissible evidence actually proffered by the parties when ruling on the motion. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999); see also MCR 2.116(G)(6).[5]

B. DISCUSSION – EASEMENTS

In *Wiggins*, 291 Mich App at 551-552, this Court discussed the construction of easements, observing:

> [I]n ascertaining the scope and extent of an easement, it is necessary to determine the true intent of the parties at the time the easement was created. Courts should begin by examining the plain language of the easement itself. If the language of the easement is clear, it is to be enforced as written and no further inquiry is permitted. A party's use of the servient estate must be confined strictly to the purposes for which [the easement] was granted or reserved, and must be confined to the plain and unambiguous terms of the easement. The scope of an easement encompasses only those burdens on the servient estate that were contemplated by the parties at the time the easement was created. [Quotation marks and citations omitted.]

An easement is the right to use the land of another for a specific purpose. *Bayberry Group, Inc v Crystal Beach Condo Ass'n*, __ Mich App __, __; __ NW2d __ (2020); slip op at 7. An easement may be created by an express grant, by reservation or exception, by agreement or covenant, *id.*, or by prescription, *Marlette Auto Wash, LLC v Van Dyke SC Props, LLC*, 501 Mich 192, 202; 912 NW2d 161 (2018). The use of an easement is strictly confined to the purpose for which it was granted or reserved. *Bayberry Group*, __ Mich App at __; slip op at 7. "Michigan courts recognize two types of easements: easements appurtenant and easements in gross." *Heydon v MediaOne*, 275 Mich App 267, 270; 739 NW2d 267 (2007). "An appurtenant easement attaches to the land and is incapable of existence apart from the land to which it is annexed." *Id.* An easement in gross benefits a particular person and not a particular piece of property and is thus personal in nature. *Id.*

In *Schadewald v Brule*, 225 Mich App 26, 35-36; 570 NW2d 788 (1997), this Court touched on easement-related principles:

> An easement does not displace the general possession of the land by its owner, but merely grants the holder of the easement qualified possession only to the extent necessary for enjoyment of the rights conferred by the easement.

---

[5] Under MCR 2.116(I)(2), "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." "Summary disposition may be granted in favor of an opposing party under MCR 2.116(I)(2) if there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law." *City of Holland v Consumers Energy Co*, 308 Mich App 675, 681-682; 866 NW2d 871 (2015).

> An appurtenant easement, which is the type of easement at issue in this case, attaches to the land and is incapable of existence separate and apart from the particular land to which it is annexed. The land served or benefited by an appurtenant easement is called the dominant tenement. The land burdened by an appurtenant easement is called the servient tenement. . . . .
>
> Once granted, an easement cannot be modified by either party unilaterally. The owner of an easement cannot materially increase the burden of it upon the servient estate or impose thereon a new and additional burden. [Citations omitted.]

"An easement appurtenant is necessarily connected with the use or enjoyment of the benefited parcel and may pass with the benefited property when the property is transferred." *Heydon*, 275 Mich App at 270. "Where an easement is annexed or appurtenant to land, it passes as an appurtenance, with a conveyance or devise of the dominant estate, and need not be specifically mentioned in the deed or will." *Myers v Spencer*, 318 Mich 155, 165; 27 NW2d 672 (1947) (quotation marks and citation omitted). The *Myers* Court explained:

> When the owner of an entire estate makes one part of it visibly dependent for the means of access upon another, and creates a way for its benefit over the other, and then grants the dependent part, the other part becomes subservient thereto, and the way constitutes an easement appurtenant to the estate granted, and passes to the grantee as accessorial to the beneficial use and enjoyment of the granted premises. [*Id.* at 166 (quotation marks and citation omitted).]

A fee owner may make any use of his or her land as long as it does not unreasonably interfere with the easement holder's use of the land. *Lee v Fidelity Life & Income Mut Ins Co*, 2 Mich App 82, 86-87; 138 NW2d 545 (1965). Likewise, "[t]he owner of the right of way has the right to a reasonably unobstructed passage at all times, and also such rights as are incident or necessary to the enjoyment of such right of passage." *Murphy Chair Co v American Radiator Co*, 172 Mich 14, 29; 137 NW 791 (1912); see also *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 41-42; 700 NW2d 364 (2005) ("It is an established principle that the conveyance of an easement gives to the grantee all such rights as are incident or necessary to the reasonable and proper enjoyment of the easement.") (quotation marks and citation omitted). Equitable relief is available for a violation of or interference with an easement. *Hasselbring v Koepke*, 263 Mich 466, 476; 248 NW 869 (1933).

In this case, Pellerito first argues on appeal, correctly so, that the walkway easement could not have existed immediately before Pellerito purchased his property because Home Town owned the two properties at issue and one cannot hold an easement over his or her own land. See *Murphy Chair*, 172 Mich at 29 ("[O]ne cannot have an easement in his own estate in fee."). Pellerito also accurately contends that even if the walkway easement existed before Home Town owned the two properties, the easement was extinguished when Home Town acquired the buildings. See *Dimoff v Laboroff*, 296 Mich 325, 328; 296 NW 275 (1941) ("The union of dominant and servient estates in the same owners extinguishes prior easements."). Therefore, according to Pellerito, the trial court clearly erred by finding that the walkway easement was already in existence when the land contract and maintenance agreement were executed in January of 1997. In its written opinion, the trial court stated that the walkway "easement corresponds to a walkway that runs between

[Pellerito's] parcel and a building to the east, . . . and it is believed to have in fact and in subsequent legal description [existed] since 1919." First, it appears that the trial court may have simply been referring to the walkway or alley itself and not the walkway *easement*. Regardless, assuming that the trial court was of the belief that the walkway easement had been in existence without interruption since 1919, we conclude that that conclusion does not warrant reversal. Such assumption has no real bearing on or relevance to the trial court's ultimate determinations that the land contract and subsequent deed reserved a walkway easement, that the walkway easement was separate and distinct from the maintenance easement, that the walkway easement was an easement appurtenant to the property Home Town (dominant tenement) retained, that this easement was necessarily conveyed to Landmark along with the building by warranty deed, and that Landmark had the right to utilize the walkway easement for general ingress and egress purposes.

Pellerito next argues that "[t]he only document that creates any valid easements is the Maintenance Easement document." Pellerito claims support for that argument by directing our attention to the language in the maintenance easement referring to the inclusion of "that portion of the premises to the alley which is a part of the description." Pellerito then contends that the maintenance easement "evidences a true intent to create two easements whose purpose is for access to the roof for maintenance." Pellerito continues the argument, asserting as follows:

> The two easements at issue were created out of [the] Maintenance Easement document. [Landmark] can only use them for "installing and maintenance of mechanical equipment, and ingress and egress for the purpose of repairing any damage to the roof." . . . However the machinery was later removed by [Landmark] after it purchased its parcel in 2011. Thus, the burdens justifying the easements' creation were long ago extinguished, meaning the easements are extinguished by operation of law. The Court erred when it allowed [Landmark] carte blanche to exceed the scope of the easements because [Landmark's] renovations are completely unrelated to nonexistent machine maintenance.

Indeed, "[i]t is settled law that a grant of an easement for particular purposes having been made, the right thereto terminates as soon as the purposes for which granted cease to exist or are abandoned or are impossible." *MacLeod v Hamilton*, 254 Mich 653, 656; 236 NW 912 (1931) (quotation marks and citation omitted).

We agree with the trial court and hold that the walkway easement was separate and distinct from the maintenance easement and that the walkway easement stood on its own and could be used for purposes of ingress and egress generally. The walkway easement was created by reservation in writing in the land contract and later in the warranty deed. See *Bayberry Group*, __ Mich App at __; slip op at 7; MCL 566.106 (statute of frauds regarding a conveyance of an interest in land and requiring a writing). And the walkway easement did not have any language regarding rooftop maintenance or equipment. Furthermore, the walkway easement did not make any reference to the maintenance agreement or easement, nor did the language in the maintenance agreement indicate that it was incorporating in any fashion the walkway easement set forth in the land contract. Contrary to Pellerito's argument, the language in the maintenance agreement referring to the "portion of the premises to the alley" did not extend the maintenance easement to cover the walkway itself; rather, the reference merely reflected that Pellerito's entire premises, including the alley or walkway, was subject to the rooftop maintenance and equipment easement. We

acknowledge that the language was awkward, but even were we to conclude that the maintenance easement gave Home Town easement rights on the roof of Pellerito's building and easement rights to use the walkway for purposes of maintenance and equipment movement, the walkway easement created in the land contract and associated warranty deed could still constitute a separate and enforceable easement even if maintenance-related easements rights had been extinguished. Because the walkway easement for general ingress and egress purposes was separate and distinct from the maintenance easement and unconnected to any rooftop maintenance, we reject Pellerito's argument that the walkway easement was extinguished because the need for rooftop maintenance had ceased to exist.

As argued by Landmark, its lawsuit, aside from the party wall issue, relied solely on the walkway easement and was not based in any part on the maintenance easement. To the extent that Pellerito renews his argument from below that the warranty deed from Home Town to Landmark did not convey the walkway easement because no easement was mentioned, we find the argument fails given that the walkway easement was plainly appurtenant to the property sold to Landmark and ran with the land, making it unnecessary to mention the easement in the deed. See *Myers*, 318 Mich at 165-166; *Heydon*, 275 Mich App at 270; *Schadewald*, 225 Mich App at 35-36.[6]

We note that Pellerito argues that the trial court erred by relying on his answer to Landmark's complaint in which he did not contest allegations that the land contract and associated warranty deed reserved the walkway easement. We agree with Pellerito that MCR 2.116(C)(9) (failure to state a valid defense), not MCR 2.116(C)(8) (failure to state a claim), would apply if Landmark were entitled to summary disposition on the basis of Pellerito's pleadings, specifically his answer to the complaint. We also agree with Pellerito that granting summary disposition in favor of Landmark on the basis of Pellerito's answer to the complaint was not proper. Even though Pellerito pleaded "no contest" to allegations that the land contract and subsequent warranty deed reserved a walkway easement for Home Town, the concessions did not defeat Pellerito's position that the walkway easement solely concerned rooftop maintenance and had been extinguished, nor did it defeat Pellerito's stance that the walkway easement was not conveyed to Landmark in the deed from Home Town. Ultimately, however, the documentary evidence established as a matter of law that the walkway easement was separate and distinct from the maintenance easement, that the walkway easement was for ingress and egress purposes in general and had not been extinguished, and that the walkway easement was appurtenant and passed with the land when sold to Landmark.

C. DISCUSSION – PARTY WALL

Pellerito argues that a genuine issue of material fact existed regarding Landmark's rights over the party wall because Landmark's deed subjected it to the party wall rights of adjoining owners while not specifically stating that the party wall was actually being conveyed to Landmark. In *Mich Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 370; 699 NW2d 272 (2005), the Michigan Supreme Court observed:

---

[6] The walkway easement was not an easement in gross because it did not indicate that it was for the benefit of a particular person or entity. *Heydon*, 275 Mich App at 270.

An inquiry into the scope of the interest conferred by a deed such as that at issue here necessarily focuses on the deed's plain language, and is guided by the following principles:

> "(1) In construing a deed of conveyance[,] the first and fundamental inquiry must be the intent of the parties as expressed in the language thereof; (2) in arriving at the intent of parties as expressed in the instrument, consideration must be given to the whole [of the deed] and to each and every part of it; (3) no language in the instrument may be needlessly rejected as meaningless, but, if possible, all the language of a deed must be harmonized and construed so as to make all of it meaningful; (4) the only purpose of rules of construction of conveyances is to enable the court to reach the probable intent of the parties when it is not otherwise ascertainable." [Citations omitted; brackets in original.]

With respect to the party wall or walls between the buildings, the land contract and the warranty deed conveying the property to Pellerito plainly and unambiguously provided that Pellerito was only obtaining the "Easterly face" and the "Southerly face" of existing walls, which is that side of the walls as viewed from the interior of Pellerito's building.[7] Thus, Home Town necessarily retained ownership of the other side of the walls and, ostensibly, later conveyed that ownership interest to Landmark by warranty deed in 2011. We cannot decipher, and Landmark provides us with no assistance in deciphering, whether the warranty deed from Home Town to Landmark specifically encompassed the two walls or faces thereof.[8] Nevertheless, what is clear is that Pellerito's ownership rights did not extend beyond the inside faces of the walls of his building, thereby giving rise to trespass when Pellerito used the walls beyond their faces. We cannot conclude that the trial court erred with respect to its ruling regarding the party wall(s).

III. CONCLUSION

We hold that the trial court did not err in granting summary disposition in favor of Landmark with respect to Landmark's claims concerning trespass and declaratory relief relative to the walkway easement and the party wall(s).

---

[7] Similar to the problem that we noted earlier, the parties' failures to submit adequate photographs and provide detailed descriptions of the premises lead us to be unclear regarding the party wall or walls. The trial court spoke about the party wall measuring 61.6 feet in length, but the parties in their appellate briefs address the party wall measuring 25 feet in length, which is at the rear of Pellerito's property. See Appendix. Regardless of which wall is actually at issue, the legal description in the land contract and associated warranty deed indicated that Pellerito was only obtaining ownership to the face of both walls as viewed from the interior of Pellerito's building.

[8] It would seem a bit ludicrous to conclude that Home Town sold the Ballentine Building to Landmark except for the faces of two party walls.

We affirm. Having fully prevailed on appeal, Landmark may tax costs under MCR 7.219.

/s/ Christopher M. Murray
/s/ Jane E. Markey
/s/ Anica Letica